

The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a PLR).

August 1, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us/Laws/regs/part1200/), is in response to your letter of July 5, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I am writing to you requesting a Private Letter Ruling (PLR), pursuant to 2 Ill. Admin. Code Sec. 1200.110. The PLR addresses the jurisdictional rules for application of local Retailers' Occupation Tax (ROT), as they relate to retail sales transactions in Illinois. PLRs respond to inquiries made by taxpayers or their representatives under power of attorney (attached). Further, we understand that PLRs discuss tax principles or applications and are binding on the Illinois Department of Revenue (the IDOR) to the extent that the material facts of the situation remain the same, and the law relied upon in the ruling does not change.

FACTS

AAA sells construction products to contractors and other retail customers in Illinois. AAA has its headquarters and an office in CITY, Illinois and another office in CITY2, Illinois. AAA's credit manager (who is also a corporate officer) is located in CITY2. AAA has distribution centers attached to the offices. AAA also has showrooms throughout the state. The showrooms are aligned with the offices and distribution centers.

CASH AND COMMERCIAL CREDIT CARD SALES

AAA makes sales to walk-in customers at its headquarters and showrooms. The customers are often residential homeowners. In these cases, AAA's clerk on site takes the customer's order, accepts it, receives payment in cash or by commercial credit card (i.e., MasterCard, Visa), and allows the customer to leave the showroom with the

purchase. AAA applies sales tax at the combined state and local tax rate imposed at the showroom location where it makes the sale.

SALES ON ACCOUNT

AAA also offers financing to customers to facilitate business. AAA offers sales on account to commercial customers which make frequent and/or large-volume purchases. The customers establish an account with AAA to expedite at a fair price the timely acquisition of product. The following steps outline AAA's procedures for making sales on account:

1. A customer may view product samples with a AAA sales representative. Existing customers are typically familiar with the product line and will forward blueprints or a house plan to the sales representative. Their meeting usually takes place at a AAA showroom or the customer's business.
2. If the customer decides to purchase product, the sales representative prepares a proposal identifying the customer and the representative and the product type, style, quantity, estimated price, delivery date, and financing terms.
3. If the customer is new and wants to establish a line of credit with AAA, the customer completes a credit application. An existing customer buying on credit has its account number noted on the proposal.
4. The sales representative forwards the proposal to AAA 's office in CITY.
5. The office in CITY then does the following:
 - a) It converts the proposal into a purchase order.
 - b) It next reviews the purchase order for quality parameters- namely, pricing and product availability. It also reviews the customer's creditworthiness.
 - c) If the purchase order meets quality parameters, and the customer displays good credit, the office submits the information for a final review and approval to AAA's credit manager located in CITY2, Illinois.
 - d) If the purchase order does not meet established quality parameters, or the customer displays insufficient credit, the order is placed on-hold and is sent for further investigation to a credit coordinator in CITY.
 - e) The credit coordinator reviews the on-hold order and attempts to resolve its status by contacting for more information either the sales representative or the customer.
 - f) The credit coordinator then submits his finding and recommendation, along with the customer's purchase order, for approval or disapproval to the credit manager.
6. Based on information and recommendation received from the office, AAA's credit manager in CITY2 either accepts or rejects the customer's purchase order by performing the following procedures:
 - a) If the credit manager decides to accept the customer purchase order, he binds AAA to the terms and conditions of the sale as detailed therein. The sales representative and the office in CITY do not have the authority to accept customer payment or arrange for delivery of product until the credit manager makes an affirmative order-acceptance decision.
 - b) The credit manager retains a record of his decision, which includes the customer's purchase order, the results of the credit check, and his signed and dated order acceptance.
 - c) The credit manager next transmits for fulfillment his order-acceptance decision to a public email directory in CITY.

- d) Upon receiving the credit manager's decision via the public email directory, the order fulfillment team assembles the customer's order and arranges for sales invoice issuance, customer payment, and pick up or delivery.
- e) If the credit manager rejects the customer's purchase order, then the order is cancelled, or is approved only as a cash sale.

ISSUE

- 1. What state and local tax rate should be applied to cash and commercial credit-card sales?
- 2. What state and local tax rate should be applied to sales on account?

STATEMENT

AAA is not under audit and litigation is not pending with the IDOR. To the best of our knowledge, the IDOR has not previously ruled on the same or similar issues for AAA, nor has AAA submitted a petition on a similar issue and withdrawn it before a letter ruling was issued. The IDOR did compose a General Information Letter on this issue, which has been enclosed.

LAW

A. Sales Taxes

1. State Sales Tax

Illinois imposes the Retailers' Occupation Tax (the ROT) on persons engaged in selling at retail within the state tangible personal property. Illinois imposes the tax at the rate of 6.25 percent of gross receipts from retail sales made. 35 ILCS 120/2-10; 86 Ill. Adm. Code Sec. 130.101.

2. Home-Rule Sales Tax

The Illinois Constitution authorizes home-rule units (e.g., municipalities) to exercise certain governmental powers. Sec. 6(a), Art. VII, Ill. Const. A home-rule unit may for example impose taxes upon occupations. Sec. 6(e), Art. VII, Ill. Const. In other words, a home-rule municipality may impose a tax upon all person engaged in the business of selling at retail within its municipality tangible personal property. The tax rate may be imposed in 0.25 percent increments. 55 ILCS 5/5-1006; 65 ILCS 5/8-11-1.

3. RTA-ROT

The state imposes a Regional Transportation Authority Retailers' Occupation Tax (the RTA-ROT) on persons engaged in selling at retail within certain counties tangible personal property. The RTA-ROT is imposed at rates ranging from 0.25 to 1 percent. 86 Ill. Adm. Code Sec. 320.101(a).¹

B. Order-Acceptance Point

In determining the location of a sale for taxing purposes, the IDOR believes that the single most important element is the location where the seller accepts the customer's

¹ The board of commissioners of any county water commission district may also impose a sales tax on retailers of tangible personal property--the County Water Commission Retailers' Occupation Tax (the CWC-ROT). 70 ILCS 3720/4(a). The county may impose the CWC-ROT at a rate of 0.25 percent of the gross receipts from retail sales. 70 ILCS 3720/4(b). DuPage is currently the only county to impose the tax. All retailers doing business within the DuPage Water Commission district must collect the tax on their sales made there. Information Bulletin FY 88-12, Illinois Department of Revenue (the IDOR) December 1, 1987. 86 Ill. Adm. Code Sec. 630.101(a).

purchase order.² 86 Ill. Adm. Code Sec. 270.115(b), (c), 220.115(c), 630.120(b), and 320.115. ST 01-0005 PLR (February 14, 2001), ST 01-0007-PLR (February 15, 2001), ST 01-0018-PLR (May 16, 2001), ST 01-0003-PLR (February 2, 2001), ST 00-0085-GIL (April 19, 2000), ST 00-0038-GIL (March 6, 2000), ST 00-0020-GIL (January 26, 2000) and ST 91-1008-PLR (December 18, 1991), ST 93-0569-GIL (November 8, 1993), and ST 92-0333-PLR (June 30, 1992). The IDOR will assume, absent clear proof to the contrary, that the seller accepts the purchase order (i.e., makes the sale or executes the contracting action) at the place of business where the seller receives it from the purchaser. 86 Ill. Adm. Code Sec. 270.115(b)(2) and (c)(1). This is the case regardless of whether or not the purchaser takes delivery there -- provided that the purchaser does receive physical possession of the property somewhere in Illinois. If the order-acceptance point is in Illinois, the location from which goods are shipped is also not controlling in connection with the imposition of local sales tax. *Id.*

The presumption that the seller accepts the purchase order at the location of its receipt may be rebutted when clear proof demonstrates that acceptance of the order takes place elsewhere. The IDOR has explained in numerous Private Letter Rulings (PLRs) and General Information Letters (GILs) that the location where the seller accepts the customer's purchase order is the determining element. According to the PLRs and GILs, an order is accepted only when the seller takes action that binds it unconditionally to the terms and conditions of the order.

In ST 01-0005-PLR (February 14, 2001), it was explained that a company maintains two offices in Illinois: City 1 is the site of the branch sales office and shipping warehouse. City 2 is the office location of the customer credit and relations analyst (the analyst). Customer orders are submitted to the branch sales office in City 1 where they are entered into the sales computer system. The sales computer system establishes customer creditworthiness and conditionally approves customer orders. The analyst in City 2 accesses all conditionally-approved orders and conducts a final review of them. After conducting a final review, the analyst informs the company's warehouse and branch sales office that he has given final approval to the orders. The IDOR determined that, even though customers' orders were given conditional approval in City 1, City 2, where the analyst makes final approval, is the jurisdiction whose local tax rate should apply. The IDOR stated that the place where the sale receives complete and unconditional approval determines what local sales tax rate should apply.

In ST 01-0018-PLR (May 16, 2001), customers are able to request pricing information from a company sales department. They may order products by phone or Internet, or from a sales representative. Orders are entered into the company's order-entry system and are conditionally approved once the customer's creditworthiness has been determined. The conditionally-approved orders are then sent for final approval to a credit analyst. The credit analyst researches the customer's credit history before making any final determinations on whether an order should be accepted or rejected. The IDOR stated that the credit analyst's evaluation of conditionally-approved orders constitutes

² '[T]he seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business ...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule...Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.' 86 Ill. Adm. Code Sec. 270.115(b)(1).

the final action taken in accepting the purchase order. The location where the final approval takes place is the jurisdiction whose local tax applies.

In ST -93-0569-6IL (November 8, 1993), a retailer writes that salespeople located at a field office take its customers' orders. The salespersons enter the orders into a computerized order-entry system via remote hand-held transmitters plugged into telephone lines. The orders are then electronically transmitted to the retailer's central computer located at its corporate headquarters in Milwaukee. The orders appear on a credit approval screen there. If approved by the headquarters' credit department in Milwaukee, the orders are printed, and the items are shipped to the customers in Illinois. The IDOR opined in the GIL that the final acceptance of the orders takes place in Milwaukee rather than at the field office where salespeople take customers' orders. Again, it is important to note that the IDOR does not consider an order accepted until a decision that binds the seller to the order has been made.

In ST 91-0162-PLR (March 5, 1991), an oil marketing and distribution company employs a customer service clerk to take customer orders and determine if the customer has a sales account with the company. If the customer has a sales account with the company, the clerk sends the order for credit approval to the credit manager. If the credit is approved, the customer order is sent to the Executive Vice President, at the same location, for price determination and pricing authority. A billing and pricing clerk then processes the order and submits it to the commercial sales office in City 3, Illinois where it undergoes a final acceptance process. The commercial sales manager there compares the customer's order to a master customer record to verify the accuracy of the customer's information. If the order is accurate, the commercial sales manager in City 3, Illinois accepts it. After acceptance by the commercial sales manager, the order is considered binding on the company and is faxed to the dispatch center for release. The IDOR confirmed that the sales acceptance point occurs in City 3, Illinois, and this should be the jurisdiction whose local sales tax applies.

ANALYSIS

For walk-in sales, whereby the customer pays for the product with cash or commercially-issued credit card, the order-acceptance points for purposes of imposing local sales tax are the various individual store locations, since the contractually-binding selling activity takes place there.

For account sales, the order-acceptance point is at AAA's office in CITY2, Illinois where the credit manager is located. This is because purchase-order acceptance, as demonstrated by the following activities, takes place there:

- The credit manager performs a final review of the customer's account, credit and purchase-order information and the recommendation received from the office in CITY to determine whether quality parameters have been met and whether a customer has sufficient credit.
- Upon determining that quality parameters are satisfied and that the customer has sufficient credit, the credit manager decides to accept the purchase order, thereby binding AAA unconditionally to the terms of the sale.
- Sales representatives, store clerks, and office personnel in CITY do not have any authority to generate a sales invoice, accept customer payment, or arrange for

the release and delivery of product until they have received an affirmative order-acceptance directive from the credit manager.

It is AAA's intention to accept or reject all account sales through its credit manager located in CITY2, Illinois. Thus, the local sales tax imposed in CITY2 should apply to account sales.

CONTRARY AUTHORITY AND DISCUSSION

For cash sales and credit-card sales, no contrary authority is found. For account sales, the sales representatives or the store clerks solicit sales. They obtain information from customers, accept consideration, and arrange for release or delivery of product. However, the IDOR has indicated in its regulations and other authoritative pronouncements that imposition of local sales taxes is based on the purchase-order acceptance point and not the location from where salespeople solicit orders, gather customer sales information, or deliver materials. Accordingly, since contractual-selling activity--namely, final credit review and approval, the binding acceptance or rejection of purchase orders, and the transmitting of permission for store clerks to generate sales invoices, for credit personnel to mail invoices to customers, and for operations managers to arrange for product release and delivery--occurs at the credit manager's office located in CITY2, Illinois, the local sales tax imposed there should apply to account sales.

CONCLUSIONS

1. The facts of this case support the finding that AAA's order-acceptance points for its cash and credit-card sales are at its various store locations. Thus, AAA should remit to the IDOR the state and local ROT imposed upon retailers doing business at the various store locations.
2. The facts of this case also support the finding that AAA's order-acceptance point for its account sales are at its credit manager's office located in CITY2, Illinois. Therefore, with respect to account sales, AAA should remit to the IDOR the state and local ROT imposed upon retailers doing business in CITY2, Illinois.

We respectfully request that the IDOR issue a Private Letter Ruling addressing the issues presented. We also respectfully request that the IDOR delete AAA's name from the publicly-disseminated version of the PLR. Your cooperation is appreciated.

The imposition of the various sales tax related local taxes in Illinois are triggered when 'selling' occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

In the situation you presented, your client's cash and credit-card sales are being made from

the same location where the inventory is located. Under these circumstances, the location of the showroom sites is the Illinois jurisdiction that determines the rate of tax for the cash and credit-card sales.

In regards to the sales on account you describe, the company does not become bound to deliver the materials until the company's credit manager located in CITY2, Illinois accepts the customer's purchase order after a credit review. Therefore, for sales on account, the location of the company's credit manager in CITY2, Illinois and the credit manager's final acceptance of the purchase orders in CITY2 establishes CITY2 as the Illinois jurisdiction that determines the rate of tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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MAJ:msk
Enc.